# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD SEVENTEENTH REGION

In the Matter of:	)
COPPER CRAFT PLUMBING, INC. AND KANSAS CITY PLUMBING, INC., A Single Employer and Their Alter Egos, KC COMMERCIAL PLUMBING, INC.	) ) ) )
AND STUDIO 36, LLC,	)
Respondent,	) Cose Nos 17 CA 24227
and	) Case Nos. 17-CA-24227 ) 17-CA-24291
DONOVAN SHAFER, an Individual,	)
and	)
STEVEN R. COX, an Individual,	)
Charging Parties.	)

### **EXCEPTIONS TO DECISION AND ARGUMENT IN SUPPORT**

COMES NOW the Respondents by and through their counsel and set out Exceptions to the Judge's Decision dated April 30, 2009.

#### **EXCEPTION**

Respondent's take exception to the factual findings and conclusions of law that the ALJ made in finding that Studio 36, LLC is an alter ego and single employer with Copper Craft, Kansas City Plumbing, and KC Commercial set out on pages 23, 24, 25 and 26 of the ALJ's decision.

### **ARGUMENT IN SUPPORT OF RESPONDENT'S EXCEPTION**

Studio 36 LLC was formed solely to purchase and own the building at 3600 Troost Kansas City, MO that is the personal residence of Tim and Cami Nettekoven and their six

children. The Nettekoven's had been negotiating with the owner of the building for 11 years prior to purchasing the building and because the owner was dying of cancer and MS he was willing to sell the property in August of 2008. (tr. p. 39:18-25). The Respondent's intent was to live on the second level and operate KC Commercial Plumbing out of the first level but not operate Kansas City Plumbing or Copper Craft. (40:1-4). Respondent did move remaining inventory to 3600 Troost. (40:5-6).

At the time that Mr. Nettekoven moved into 3600 Troost, Kansas City Commercial Plumbing and Copper Craft were insolvent irretrievably. (40:4-5). KC Commercial Plumbing was going nowhere and Mr. Nettekoven had taken his job at WC Construction. (41:2-4). Kansas City Plumbing, Copper Craft nor KC Commercial Plumbing paid rent to Studio 36, LLC. (40:18-25, 41:1-4). He [Nettekoven] had enough creditors banging on his door. He did not charge rent because he would rather pay his creditors.(40:21-23).

The down payment of \$50,000 on the property at 3600 Troost came from a \$42,000.00 personal injury settlement of Mr. Nettekoven's and \$8,000.00 from personal savings of the Nettekoven's. (41:22-25; 42:1-3).

On page 23 line 23 of the ALJ's decision she states that there is no dispute that Copper Craft, Kansas City Plumbing and KC Commercial Plumbing operated out of a shared facility owned by Studio 36. There is no evidence that Copper Craft or Kansas City Plumbing operated out of 3600 Troost. KC Commercial only operated for a short period of time. By the time the Nettekoven's moved into 3600 Troost, KC Commercial was "going nowhere" and Mr. Nettekoven was working as an employee at WC Construction. He moved the plumbing equipment and vehicles to 3600 Troost because he needed a physical place to store them.

The fact that Copper Craft and Kansas City Commercial Plumbing didn't pay rent was because they had already gone out of business by the time there was a move to 3600 Troost. Mr. Nettekoven when asked if KC Commercial paid rent referred to the financial condition of the company and basically said that KC Commercial Plumbing could not afford to pay rent because there were too many creditors.

The ALJ cited *White Oak Coal*, 318 NLRB 732 to support her position that Studio 36 should be held to be an alter ego of the Copper Craft, Kansas City Commercial Plumbing or KC Commercial Plumbing. The major problem in *White Oak* was the owners utilizing the funds of the mining company for personal use. The Court found that the Deel's "drew corporate funds for personal matters from whatever business account was solvent at the time." (318 NLRB 732; 734).

There appears to be only two circumstances that connect Studio 36 to Copper Craft, Kansas City Plumbing and KC Commercial Plumbing. Mr. Nettekoven needed a place to store the equipment and supplies of two dead and one dying business and the second is that the opportunity to purchase a building that the Nettekoven's had been wanting to purchase for 11 years became available on or around the same time as the new company was formed.

The building was purchased with the private funds of the Nettekovens. None of the companies' assets or funds were used in any aspect of the new business other than as a place to be stored until liquidated. The ALJ admits that the record does not contain specific information that would address the factors set out in *White Oak* but relied upon the factually unsupported conclusion of the General Counsel that the corporate identities were created under Cami Nettekoven's name in an effort to hide Tim Nettekoven's involvement.

Respondent never attempted to hide that KC Commercial was an alter ego of Kansas City

Plumbing and Copper Craft. Respondent admitted it in their answer and stipulated to it in

the trial. The ALJ cited A.J. Mechanical, Inc. in further support. In A.J. Mechanical, Inc.

as in White Oak Coal the parties used corporate funds for personal uses, in that they

liquidated the company and paid themselves personally. In this case I can see no way that

Studio 36 or the Nettekoven's benefited financially by storing vehicles and equipment in

essentially the basement of their residence.

Studio 36 is nothing more than a corporation that owns a building; it does not do

any plumbing work. General Counsel is not seeking to hold the Nettekoven's personally

responsible. However, Studio 36 is not a plumbing company, the Nettekoven's have been

attempting to buy the building for 11 years, it was not purchased with plumbing company

funds or assets, Copper Craft and Kansas City Plumbing was insolvent when the

Nettekoven's moved in, Tim Nettekoven was employed by another non related employer at

the time of the move, and Kansas City Commercial Plumbing was going nowhere and in

fact ceased operation shortly thereafter.

WHEREFORE, for the above and forgoing reasons the Respondents request the

Board overturn the ALJ's decision and find that Studio 36 LLC is not an alter ego of

Copper Craft Plumbing, Kansas City Commercial Plumbing, or KC Commercial

Plumbing.

By <s> Walter R. Roher

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#### **CERTIFICATE OF SERVICE**

I hereby certify that I have this date served copies of the foregoing Motion for Extension of Time on all parties listed below pursuant to the National Labor Relations Board's Rules and Regulations 102.114(i) by electronically filing with the Office of the Executive Secretary and by electronic email to Counsel for General Counsel and Charging Party Donovan Shafer. Charging Party Steve Cox was served by overnight delivery service.

Dated: May 28, 2009

By<s>Walter R. Roher

Walter R. Roher 200 N. E. Missouri Road, Suite 200 Lee's Summit, MO 64086 Counsel for Respondent

### **PARTIES RECEIVING EMAIL**

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## PARTIES RECEIVING OVERNIGHT DELIVERY:

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